

# HOUSE BILL No. 1662

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-28.

**Synopsis:** Liens for unpaid or unsatisfied fringe benefits. Provides that a mechanic's lien and a lien on a strip mine may be recorded for unpaid or unsatisfied fringe benefits and withholdings.

**Effective:** July 1, 2003.

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**Lawson L, Liggett**

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January 21, 2003, read first time and referred to Committee on Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1662

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 32-28-3-0.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2003]: **Sec. 0.5. As used in this chapter, "fringe benefits and**  
4 **withholdings" means compensation due an employee under a**  
5 **written contract or written policy for benefits in addition to wages,**  
6 **including:**

7           **(1) holiday pay;**

8           **(2) time off for:**

9               **(A) sickness or injury; or**

10            **(B) personal reasons or vacation;**

11           **(3) bonus pay;**

12           **(4) authorized expenses incurred during the course of**  
13 **employment; and**

14           **(5) contributions due to or on behalf of an employee.**

15       SECTION 2. IC 32-28-3-1, AS ADDED BY P.L.101-2002,  
16 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2003]: Sec. 1. (a) A contractor, a subcontractor, a mechanic,



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a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

(1) the erection, alteration, repair, or removal of:

(A) a house, mill, manufactory, or other building; or

(B) a bridge, reservoir, system of waterworks, or other structure; or

(2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or

(3) any other earth moving operation;

may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages, **fringe benefits and withholdings, or both wages and fringe benefits and withholdings** of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

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(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract for the construction, alteration, or repair of:

- (1) a Class 2 structure (as defined in IC 22-12-1-5);
- (2) an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(3) property that is:

(A) owned, operated, managed, or controlled by a:

- (i) public utility (as defined in IC 8-1-2-1);
- (ii) municipally owned utility (as defined in IC 8-1-2-1);
- (iii) joint agency (as defined in IC 8-1-2.2-2);
- (iv) rural electric membership corporation formed under IC 8-1-13-4;
- (v) rural telephone cooperative corporation formed under IC 8-1-17; or
- (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

- (1) be in writing;
- (2) contain specific reference by legal description of the real estate to be improved;
- (3) be acknowledged as provided in the case of deeds; and
- (4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

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(g) Upon the filing of a contract under subsection (f), the recorder shall:

(1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;

(2) index the contract in the name of the:

(A) contractor; and

(B) owner;

in books kept for that purpose; and

(3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

(1) a contractor, subcontractor, mechanic; or

(2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first

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delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 3. IC 32-28-3-3, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) Except as provided in subsection (b), a person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(b) This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5). A person who wishes to acquire a lien upon property, whether the claim is due or not, must file in duplicate a sworn statement and notice of the person's intention to hold a lien upon the property for the amount of the claim:

- (1) in the recorder's office of the county; and
- (2) not later than sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter.

The statement and notice of intention to hold a lien may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

(c) A statement and notice of intention to hold a lien filed under this section must specifically set forth:

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(1) the amount claimed, **including any fringe benefits and withholdings;**

(2) the name and address of the claimant;

(3) the owner's:

(A) name; and

(B) latest address as shown on the property tax records of the county; and

(4) the:

(A) legal description; and

(B) street and number, if any;

of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks, or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien.

(d) The recorder shall:

(1) mail, first class, one (1) of the duplicates of the statement and notice of intention to hold a lien to the owner named in the statement and notice not later than three (3) business days after recordation;

(2) post records as to the date of the mailing; and

(3) collect a fee of two dollars (\$2) from the lien claimant for each statement and notice that is mailed.

The statement and notice shall be addressed to the latest address of the owner as specifically set out in the sworn statement and notice of the person intending to hold a lien upon the property.

SECTION 4. IC 32-28-3-9, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) This section applies to a:

(1) subcontractor;

(2) lessor leasing construction and other equipment and tools, regardless of whether an operator is also provided by the lessor;

(3) journeyman; or

(4) laborer;

employed or leasing any equipment or tools used by the lessee in erecting, altering, repairing, or removing any house, mill, manufactory or other building, or bridge, reservoir, system of waterworks, or other structure or earth moving, or in furnishing any material or machinery

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1 for these activities.

2 (b) Except as provided in section 12 of this chapter, in order to  
3 acquire and hold a lien, a person described in subsection (a) must give  
4 to the property owner, or if the property owner is absent, to the property  
5 owner's agent, written notice particularly setting forth the amount of the  
6 person's claim (**including any fringe benefits and withholdings**) and  
7 services rendered for which:

- 8 (1) the person's employer or lessee is indebted to the person; and  
9 (2) the person holds the property owner responsible.

10 (c) Subject to subsections (d) and (e), the property owner is liable  
11 for the person's claim.

12 (d) The property owner is liable to a person described in subsection  
13 (a) for not more than the amount that is due and may later become due  
14 from the owner to the employer or lessee.

15 (e) A person described in subsection (a) may recover the amount of  
16 the person's claim if, after the amounts of other claims that have  
17 priority are subtracted from the amount due from the property owner  
18 to the employer or lessee, the remainder of the amount due from the  
19 property owner to the employer or lessee is sufficient to pay the amount  
20 of the person's claim.

21 (f) This section applies to a person described in subsection (a) who  
22 gives written notice, to the property owner or, if the property owner is  
23 absent, to the owner's agent, before labor is performed or materials or  
24 machinery is furnished. The notice must particularly set forth the  
25 amount of:

- 26 (1) labor the person has contracted to perform; or  
27 (2) materials or machinery the person has contracted to furnish;  
28 for the employer or lessee in erecting, altering, repairing, or removing  
29 any of the buildings or other structures described in subsection (a). A  
30 person described in subsection (a) has the same rights and remedies  
31 against the property owner for the amount of the labor performed by the  
32 person or materials or machinery furnished by the person after the  
33 notice is given, as are provided in this chapter for persons who serve  
34 notice after performing the labor or furnishing the materials or  
35 machinery.

36 (g) If an action is brought against a property owner under this  
37 section, all subcontractors, equipment lessors leasing equipment,  
38 journeymen, and laborers who have:

- 39 (1) performed labor or furnished materials or machinery; and  
40 (2) given notice under this section;  
41 may become parties to the action. If, upon final judgment against the  
42 property owner the amount recovered and collected is not sufficient to

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1 pay the claimants in full, the amount recovered and collected shall be  
2 divided among the claimants pro rata.

3 SECTION 5. IC 32-28-3-12, AS ADDED BY P.L.2-2002,  
4 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2003]: Sec. 12. (a) This section applies to a person who:

6 (1) performs work or labor such as:

- 7 (A) grading;
- 8 (B) building embankments;
- 9 (C) making excavations for track;
- 10 (D) building:
  - 11 (i) bridges;
  - 12 (ii) trestlework;
  - 13 (iii) works of masonry;
  - 14 (iv) fencing; or
  - 15 (v) other structures; or
- 16 (E) performs work of any kind;

17 in the construction or repair of a railroad or part of a railroad in  
18 Indiana; or

19 (2) furnishes material for:

- 20 (A) a bridge, trestlework, work of masonry, fence, or other  
21 structure; or
- 22 (B) use in the construction or repair of a railroad or part of a  
23 railroad;  
24 in Indiana.

25 (b) The work, labor, or material described in subsection (a) may be  
26 provided under a contract:

- 27 (1) with the railroad corporation building, repairing, or owning  
28 the railroad; or
- 29 (2) with a person, corporation, or company engaged as:
  - 30 (A) lessee;
  - 31 (B) contractor;
  - 32 (C) subcontractor; or
  - 33 (D) agent;

34 of the railroad corporation in the work of constructing or repairing  
35 the railroad or part of the railroad in Indiana.

36 (c) A person to whom this section applies may have a lien to the  
37 extent of the work or labor performed, **or the value of any fringe**  
38 **benefits and withholdings due**, material furnished, or ~~both~~, **a**  
39 **combination of some or all of the amounts described in this**  
40 **subsection**, upon:

- 41 (1) the right-of-way and franchises of the railroad corporation;
- 42 and



(2) the works and structures as set forth in this section that may be upon the right-of-way and franchise of the railroad corporation; within the limits of the county in which the work or labor may be performed or the material may be furnished.

(d) A person performing work or labor or furnishing materials under a contract described in subsection (b)(2) is not required to give notice to the railroad corporation under section 9 of this chapter in order to acquire and hold a lien for labor performed, **including any fringe benefits and withholdings due**, or material furnished under the provisions of this section. The performance of the labor or the furnishing of the materials is sufficient notice to the railroad corporation. A lien that is acquired as set forth in this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

(e) A person who, in doing business with a railroad company, has constructed a building or other improvement on a portion of the railroad right-of-way adjacent to the person's place of business may have a lien to the extent of the fair market value of the improvement on that portion of the right-of-way. The lien may be acquired and enforced:

(1) upon abandonment of the right-of-way by the railroad company; and

(2) against the successors in title of the railroad company.

This subsection does not apply to property that is subject to a written agreement providing for the disposition of improvements upon abandonment. Liens acquired under this subsection shall be enforced as other mechanic's liens are enforced in Indiana.

SECTION 6. IC 32-28-3-14, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Except as provided in subsection (b), in an action to enforce a lien under this chapter, the plaintiff or lienholder may recover reasonable attorney's fees as a part of the judgment.

(b) A plaintiff may not recover attorney's fees as part of the judgment against a property owner in an action in which the contract consideration for the labor (**including any fringe benefits and withholdings**), material, or machinery has been paid by the property owner or party for whom the improvement has been constructed.

SECTION 7. IC 32-28-3-15, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. A person who knowingly or intentionally:

(1) performs labor, supplies services, or furnishes material or machinery in the:

(A) construction;

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- 1 (B) repair; or  
 2 (C) remodeling;  
 3 of a building, structure, or other work;  
 4 (2) accepts payment for the labor, services, material, or machinery  
 5 furnished and supplied;  
 6 (3) at the time of receiving the payment, knows that the person is  
 7 indebted to another for:  
 8 (A) labor, including **fringe benefits and withholdings, and**  
 9 the cost of renting or leasing construction and other equipment  
 10 and tools, whether or not an operator is also provided by the  
 11 lessor;  
 12 (B) services;  
 13 (C) material; or  
 14 (D) machinery;  
 15 used or employed in the construction, repair, or remodeling;  
 16 (4) fails:  
 17 (A) at the time of receiving the payment; and  
 18 (B) with intent to defraud;  
 19 to notify in writing the person from whom the payment was  
 20 received of the existence of the outstanding indebtedness; and  
 21 (5) causes the person from whom the payment was received to  
 22 suffer a loss by failing under subdivision (4) to notify the person  
 23 of the existence of the outstanding indebtedness;  
 24 commits a Class D felony.

25 SECTION 8. IC 32-28-3-16, AS ADDED BY P.L.101-2002,  
 26 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2003]: Sec. 16. (a) This section applies to a construction  
 28 contract for the construction, alteration, or repair of a building or  
 29 structure other than:

- 30 (1) a Class 2 structure (as defined in IC 22-12-1-5) or an  
 31 improvement on the same real estate auxiliary to a Class 2  
 32 structure (as defined in IC 22-12-1-5); or  
 33 (2) property that is:  
 34 (A) owned, operated, managed, or controlled by a public utility  
 35 (as defined in IC 8-1-2-1), a municipally owned utility (as  
 36 defined in IC 8-1-2-1), a joint agency (as defined in  
 37 IC 8-1-2.2-2), a rural electric membership corporation formed  
 38 under IC 8-1-13-4, rural telephone cooperative corporation  
 39 formed under IC 8-1-17, or a not-for-profit utility (as defined  
 40 in IC 8-1-2-125) regulated under IC 8; and  
 41 (B) intended to be used and useful for the production,  
 42 transmission, delivery, or furnishing of heat, light, water,



telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, **including any fringe benefits and withholdings due**, materials, or machinery to waive a right to:

(1) a lien against real estate; or

(2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 9. IC 32-28-10-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. As used in this chapter, "fringe benefits and withholdings" means compensation due an employee under a written contract or written policy for benefits in addition to wages, including:**

(1) holiday pay;

(2) time off for:

(A) sickness or injury; or

(B) personal reasons or vacation;

(3) bonus pay;

(4) authorized expenses incurred during the course of employment; and

(5) contributions due to or on behalf of an employee.

SECTION 10. IC 32-28-10-2, AS ADDED BY P.L.2-2002, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2. (a)** A person employed and working in and about a strip mine has a lien on:

(1) the strip mine;

(2) all machinery and fixtures connected with the strip mine; and

(3) everything used in and about the strip mine;

for labor, **including any fringe benefits and withholdings due**, performed within a two (2) month period preceding the lien. Except as provided in subdivision (b), this lien is superior to and has priority over all other liens. As against each other, these liens have priority in the order in which they accrued.

(b) A state tax lien is superior to and has priority over a lien described in subsection (a).

(c) A person desiring to acquire an employee lien as described in subsection (a) shall file within sixty (60) days after the time the payment became due in the recorder's office of the county where the

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1 mine is situated a notice of intention to hold a lien upon property for  
2 the amount of the claim. The person filing a lien shall state in the lien  
3 notice the amount of the claim and the name of the coal works, if  
4 known. If the person filing the lien does not know the name of the coal  
5 works, the person shall include in the notice any other designation  
6 describing the location of the mine. The recorder shall immediately  
7 record the notice in the location used for recording mechanic's liens.  
8 The recorder shall receive a fee in accordance with IC 36-2-7-10. If the  
9 mine is located in more than one (1) county, the notice of intention to  
10 hold a lien may be filed in any county where any part of the mine is  
11 located.

12 (d) Suits brought to enforce a lien created under this section must be  
13 brought within one (1) year after the date of filing notice of the lien in  
14 the recorder's office. All judgments rendered on the foreclosure of the  
15 liens must include:

- 16 (1) the amount of the claim found to be due;  
17 (2) the interest on the claim from the time due; and  
18 (3) reasonable attorney's fees.

19 The judgment shall be collected without relief from valuation,  
20 appraisalment, or state laws.

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